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Supreme Court, U.S.
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No. 10-1015

In the Supreme Court of the United States

THOMAS WILLIAMS, ET AL.,
Petitioners

v.

CHARLES S. RENCHENSKI,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

REPLY BRIEF FOR PETITIONER

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QUESTION PRESENTED

Does a convicted prisoner have a constitutionally protected liberty interest in not attending an in-prison sex offender treatment program?

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MISCELLANEOUS:

Mayo Clinic, Compulsive Sexual Behavior
www.mayoclinic.com/health/compulsive-sexual-behavior/DS00144/DSECTION=treatment-and-drugs 2

ARGUMENT

Petitioners ask the Court to review this case to answer one question: whether prisoners have a protected liberty interest which prevents prison officials from assigning them to participate in an in-prison sex offender treatment program ("SOTP"). The Court of Appeals answered this question in the affirmative, holding that a) requiring a prisoner to participate in a once-a-week group session in the prison is the same as committing him to a mental hospital; and b) the prisoner's participation in this program is not "compelled" but is nevertheless involuntary.

Petitioners submit that this decision is not only incoherent on its own terms, but represents an unjustified extension of the Court's decision in *Vitek v. Jones*, 445 U.S. 480 (1980); moreover, this decision, if left unreviewed, has the potential to undermine the administration of a wide variety of similar rehabilitative programs directed at drug and alcohol abuse, HIV/AIDS education and so forth.

Respondent does not vigorously argue that the issue raised by petitioners is not significant or that it lacks importance for those who manage our nation's prisons. Instead, he attempts to muddy the waters by changing the substance of the issue presented, focusing on facts which were not relied upon by the Court of Appeals and are irrelevant to deciding the legal issues involved, and generally mischaracterizing the record. In the process, respondent erroneously asserts that the Court of Appeals' decision is fully supported by this Court's precedents, that there is no

conflict among the Circuits, and that present case is a poor vehicle to address the issue presented.

For the reasons explained below, respondent's position is based on misconceptions regarding the record and a misleading, if not distorted, characterization of the decision of the Court of Appeals. Petitioners have properly raised a question of substantial importance. The arguments raised by respondent do little to demonstrate otherwise and, if anything, tend to underscore the importance of the Court resolving the issue presented in the petition.

I. This Case Does Not Involve The Forced Administration of Medication As In *Washington v. Harper,* 494 U.S. 210 (1990).

Respondent repeatedly asserts that Pennsylvania's Sex Offender Treatment Program is "comparable" to the psychiatric regimes that were at issue in *Vitek* and *Harper* because Pennsylvania's program, in his artful phrase, "involves" the use of medication. Br. in Opp. at 3, 11. Respondent, however, mischaracterizes Pennsylvania's program, his own claims in this case, and the Court of Appeals' decision.

The protocol for the SOTP does provide that, "on rare occasions," psychiatrists may attempt to treat sex offenders with "anti-androgens and Selective Serotonin Reuptake Inhibitors (SSRIs)."[1] Pet. App.

[1] Anti-androgens reduce sexual urges in men by reducing the biological effects of sex hormones. SSRIs are a class of antidepressants used to treat compulsive behavior. *See, e.g.* www.mayoclinic.com/health/compulsive-sexual-behavior/DS00144/DSECTION=treatment-and-drugs (visited March 24, 2011).

114a. The protocol, however, does not provide for the *forced* or *involuntary* administration of these drugs, nor has respondent ever claimed that he will be subjected to such involuntary medication.

Had respondent made such a claim, it would of course have been squarely governed by *Harper*. The courts below could have disposed of it in a single sentence, and their extensive discussions of the existence *vel non* of respondent's liberty interest would have been both unnecessary and inexplicable. But in fact, neither the Court of Appeals nor the District Court said anything to indicate that the involuntary administration of medication was an issue in this case, and they mention *Harper* only in passing. *See* Pet. App. 17a, 67a-68a.

Rather, the Court of Appeals (correctly) described the SOTP as a series of small-group sessions that meets once a week for two hours within the prison, Pet. App. 7a, and (incorrectly) held that assignment to this program is indistinguishable, for due process purposes, from involuntary commitment to a mental institution. Pet. App. 19a. We submit that, far from "faithfully appl[ying] this Court's precedents," Br. in Opp. at 10, the Court of Appeals' decision is a radical and unjustified extension of them, which the Court should review and reverse.

II. Pennsylvania's Sex Offender Treatment Program Is Not Limited To Prisoners Who Have Been Convicted Of A Sex Offense.

Respondent maintains that the DOC's desire to have him participate in SOTP is an anomaly which is

not provided for under state law and which is undeserving of the Court's attention. Respondent maintains that SOTP is intended only for prisoners who have been convicted of a specific sex offense and that his inclusion must be the result of some type of retaliatory or other improper animus. However, this contention is not supported by the record or by Pennsylvania state law.

Section 9718.1 of Pennsylvania's Judicial Code provides that persons convicted of certain enumerated sex offenses "shall attend and participate in a [DOC] program of counseling or therapy designed for incarcerated sex offenders." Pet. App. 6a n.3 (quoting 42 Pa. C.S. § 9718.1). While it is correct that SOTP is mandatory for prisoners convicted of certain sex offenses, respondent commits a logical fallacy when he concludes that participation in SOTP must therefore be limited to such offenders.

If Pennsylvania law actually restricted SOTP to convicted sex offenders, as respondent claims, he would in all likelihood have a state-created liberty interest. However, despite maintaining that the Court of Appeals simply did not reach the issue, Br. in Opp. at 6, the Court of Appeals specifically found that respondent never raised it. Pet. App. 18a n.8. Furthermore, contrary to the assertions made by respondent, Br. in Opp. at 2-3, the record clearly shows that the DOC includes prisoners who have not been convicted of a sex offense in SOTP.

It is the DOC's standard practice to recommend prisoners like respondent for SOTP where it is believed that they would benefit from such treatment. SCI-Coal Township's Chief Psychologist set forth the

DOC's general policy regarding placement in SOTP in his declaration which was submitted to the District Court. *See* Declaration of John P. Sidler, ¶10.[2] While the SOTP may have been created primarily for "convicted" sex offenders, respondent's assertion that the DOC does not use SOTP for other prisoners is simply false and not supported by the record.

III. The Principles Underlying This Court's Decision In *McKune v. Lile*, 536 U.S. 24 (2002) Should Be Consistent With The Court's Jurisprudence Under the Fourteenth Amendment.

In *McKune v. Lile*, 536 U.S. 24 (2002), a majority of the Court held that a prisoner's Fifth Amendment right against self-incrimination was not violated when he was required to participate in a prison sex offender program. In this case, the Court of Appeals correctly applied *McKune* to hold that respondent likewise had suffered no Fifth Amendment loss, because the sanctions that might be imposed on him if he refused to participate in the program did not amount to "compulsion." Pet. App. 30a-37a. Without explanation, the Court of Appeals nevertheless held that the availability of these same sanctions rendered respondent's participation involuntary. Pet. App. 26a.

Respondent attempts to sidestep this obvious inconsistency by asserting that "[t]he absence of compulsion within the meaning of *McKune* has no

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[2] Sidler's declaration, although part of the record, was not included in the Appendix to the Petition. It is attached to Petitioner's Reply Brief. *See* Supplement to the Appendix, 122a-34a.

bearing" on the due process inquiry, Br. in Opp. at 12, but he is mistaken. While the Due Process Clause does not require "compulsion" in so many words, it does require that a person be "deprived" of a protected interest by the action of the state[3]; and it would surely be an odd use of language to say that the state has "deprived" someone of that which he or she has voluntarily surrendered.

Thus, in both *Vitek* and *Harper*, the involuntary nature of what was happening to the prisoner was the starting point of the Court's due process analysis. *See Vitek*, 445 U.S. at 482-483 ("The question in this case is whether the Due Process Clause ... entitles a prisoner ... to certain procedural protections ... before he is transferred *involuntarily* to a state mental hospital") (emphasis added); *Harper*, 494 U.S. at 213 ("The central question before us is whether a judicial hearing is required before the State may treat a mentally ill prisoner with antipsychotic drugs *against his will*") (emphasis added). Whether respondent's participation in SOTP is voluntary or involuntary is therefore critical in determining whether he has been "deprived" of a protected liberty interest.

The Court of Appeals held that respondent was not compelled to participate in SOTP for purposes of the Fifth Amendment, but that his participation in SOTP was nevertheless involuntary for purposes of the Fourteenth Amendment. The Court of Appeals made no attempt to explain this inconsistency, and respondent says only that the Fifth Amendment and

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[3] "No state shall ... *deprive* any person of life, liberty or property without due process of law." U.S. CONST., Amend. XIV, § 1 (emphasis added).

the Fourteenth Amendment are different. The Court should review this case to provide the coherency which the Court of Appeals did not.

IV. This Case Squarely Presents an Important and Recurrent Issue in Prison Administration.

Finally, respondent claims that this case is a "poor vehicle" for resolving the question presented because, in his view, the record contains insufficient "details" about the operation of Pennsylvania's sex offender program. Br. in Opp. at 14-15. But the details that respondent now says "go[] to the core of the issue" (*Id.* at 15) – whether and under what circumstances medications are administered, for example – were of no importance whatever to the Court of Appeals. In the view of the Court of Appeals, it was enough that Pennsylvania's program was aimed at "behavior modification," Pet. App. 16a-17a, and that designating a prisoner for participation could have a "stigmatizing effect." Pet. App. 22a.

Thus, what respondent calls a "deficient" and "incomplete" record, Br. in Opp. at 11, 15, simply demonstrates the unprecedented breadth of the Court of Appeals' decision. As we have already pointed out, Pet. at 11-12, the Court of Appeals' approach calls into question the viability of a wide variety of prison rehabilitative programs which are likewise aimed at modifying behavior, and which could likewise be thought to be "stigmatizing." The Court should review this decision precisely *because* the Court of Appeals thought that the "details" were unimportant.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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DATE: March 28, 2011

SUPPLEMENT TO THE APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CHARLES S. RENCHENSKI, PLAINTIFF	NO. 3:06-CV-278
v.	(Chief Judge Richard P. Conaboy)
MR. THOMAS WILLIAMS, et al.,	(Magistrate Judge Smyser)
DEFENDANT	(Electronically Filed)

UNSWORN DECLARATION OF JOHN P. SIDLER

I, JOHN P. SIDLER, hereby state under the penalty of perjury that the following is true and correct and based upon my personal knowledge:

1. I am presently employed as the Chief Psychologist at the State Correctional Institution at Coal Township (hereinafter "SCI-Coal Township") of Pennsylvania Department of Corrections (hereinafter "DOC"). I have held this position since November, 2000.

2. I received a B.A. in Journalism and B.S. in Psychology in 1982 and a Master's Degree in Psychology in 1985. I am currently licensed as a Professional Psychologist and have been so licensed since 1994. Prior to my employment with the DOC, I was employed by Northumberland County Area Agency on Aging from 1984-1986 and at the Selinsgrove Mental Retardation Center from 1986-2000.

3. As the Chief Psychologist at SCI-Coal Township, my duties and responsibilities include, but are not limited to the overall administration and supervision of the department, administration and interpretation of psychology testing; developing and implementing inmates' psychological plans and strategies; prison rape elimination act coordinator; and serving as a member of the institutional multi-disciplinary treatment committees. In addition, I am

the coordinator of the SCI-Coal Township Sex Offenders Treatment Program (hereinafter SOTP).

4. I also familiar with the standard operating policies and procedures followed at SCI-Coal and the DOC. I am also familiar with and have access to all records maintained by the institution in the course of regularly conducted business.

5. Upon incarceration, Correctional Plans are developed for inmates based upon their initial classification and summary evaluations. These evaluations include, but are not limited to psychological and educational assessments as well as the nature and underlying circumstances of the offense for which the inmate is incarcerated. A Correctional Plan is developed for every inmate by the DOC Treatment team, which includes recommended programming, based upon his or her individual rehabilitative needs. These rehabilitative needs

include a wide range of programs including but not limited to vocational and educational programming, drug and alcohol treatment, violence prevention and sex offender treatment. The Correctional Plan is designed to address an inmate's specific needs to prevent re-offending and to enable inmates to transition back into society upon their release from prison.

6. While the recommended programming may be a requirement of an inmate's correctional plan, an inmate's participation in the specific program is voluntary. Inmates can and do refuse to participate in specific DOC programs. Willingness or refusal of an inmate to participate in required DOC programming may affect an inmate's parole status and possible sentence commutation.

7. Prior to 1999, no standardized SOTP was utilized within the DOC. Prisons within the DOC did

provide sex offenders, inmates with a history of sex offenses and inmate's who offenses contained a sexual component with sex offender programming. The sex offender programming was based upon several programs approved by the DOC at the institutional level rather than a uniform, standardized DOC program.

8. In November, 1999, the DOC instituted the Sex Offenders Treatment Program ("STOP"). Since the SOTP inception in 1999, the program has been revised in accordance with the standards and practices of the Association for the Treatment of Sexual Abusers, the Pennsylvania Sex Offenders Assessment Board and the Sex Offender Treatment Programs operating in other state correctional jurisdictions and agencies. The DOC's SOTP was recently modified in 2005 o standardize treatment at the prisons across the DOC and to update treatment

modalities. (*See* Exhibit 1 attached. Attached as Exhibit 1 is a true and correct copy of the Sex Offender Treatment Policy)

9. In accordance with the current SOTP, staff are not required to retroactively complete risk assessments on inmates incarcerated prior to the effective date of the new policy. Pursuant to the new treatment plan, assessments of those inmates occurs at the time the staff member is ready to initiate a new sex offenders group. In addition, if an inmate refuses to be interviewed for the purposes of risk assessment, it is noted on his in file. (*Id.*, § 11, B 4 (a)).

10. All inmates who are serving prison terms related to sex offenses, i.e. rape, statutory rape, involuntary deviate sexual intercourse, etc., are prescribed sex offender programming as a part of their prescriptive programming under the current SOTP, as well as any past sex offender programming.

In addition, inmates who have a prior history of sexual offenses or the nature of underlying circumstances of their offense contains a sexual component, SOTP was and is made a part of their DOC programming. Due to the sexual nature of the inmate's offense, his or her individual Correctional Plan automatically includes a program for sexual abuse treatment.

11. I am familiar with plaintiff, Charles Renchenski, AP-8124. As Chief of Psychology at SCI-Coal Township, I have access to Renchenski's institutional files, including his DOC Correctional Plan.

12. According to Renchenski inmate record, Renchenski was charged and convicted of murder and subsequently was sentenced by Clearfield County Judge John Kelly on January 30, 1985 to life imprisonment. (*See* Exhibit 2 attached. Attached as

Exhibit 2 is a true and correct copy of Renchenski's Sentence Status Summary).

13. The official version of his crime indicates that there was a sexual component to the crime, as Renchenski was engaged in a sexual act with the victim when the homicide occurred. During the course of the sex act, the victim was choked and beaten numerous times about the head, breast and genital area. In addition, the victim's breasts were slashed with a razor blade. (*See* Exhibit 3 attached. Attached as Exhibit 3 is a true and correct redacted copy of portions Renchenski's confidential Pre-Sentence Reoprt, dated July 24, 1984 and the Criminal Complaint dated August 21, 1982).

14. Renchenski was received by the DOC in 1985, convicted of Murder and sentenced to life imprisonment. At the time of his reception into the DOC, no standardized SOTP was in place; however,

Renchenski's Correctional Plan or Prescriptive Program noted Renchenski's areas of concern as drug and alcohol, assault and sexual. The decision to recommend Renchenski for sex offender programs was based upon the Treatment team's evaluation of him coupled with the sexual component Renchenski's offense. (*See* Exhibit 4 attached. Attached as Exhibit 4 is a true and correct copy of first page of Renchenski's Initial Classification and Summary Evaluation, dated February 20, 1985).

15. Although Renchenski is serving a life sentence and is not eligible for parole, the DOC has and continues to recommend a rehabilitative correctional plan for him. Renchenski's DOC correctional plan has been revised due to changes and the implementation of the DOC's SOTP's. Due to the sexual component of Renchenski's crime, as he was engaged in a sexual act with the victim when the

homicide occurred, his DOC Correctional Plan requires participation Sex Offender Program. (*See* Exhibit 5 attached. Attached as Exhibit 5 are true and correct copies Prescriptive and Correctional Plans)

16. On June 14, 2005, Renchenski was notified that a new Sex Offender's Program Group was to begin at SCI-Coal Township. This program allowed enrollment of inmates who in the past denied sex offenses. Renchenski refused to participate in this program, stating that he was never charged with nor convicted of a sex offense. Renchenski has been informed by his counselor and DOC staff on several occasions that due to the sexual component of his crime, SOTP is requirement in his correctional plan. Due to Renchenski's refusal to attend the Sex Offenders Program Group, he was not assessed. (*See* Ex. 6 attached. Attached as Ex. 6 is a true and correct

copy of the June 14, 2005 Notification Memorandum to Renchenski and Renchenski's response dated June 17, 2005; in *addition, see* Ex. 1 pg 9; Doc. No.18).

17. Renchenski has not been re-evaluated or re-assessed under the current SOTP because he has previously been recommended for the program based upon the sexual component of his offense. In addition, under the current SOTP, staff are not expected to retroactively complete risk assessments on an inmate incarcerated prior to the effective date of the new sex offenders treatment group. Pursuant to the new treatment plan, Renchenski would be assessed for risk level at the time the staff initiates a new group.

18. On January 18, 2007, Renchenski's Correctional plan noted that he was recommended for Sex Offender Program Evaluation. It was noted that he refused to participate. The notation on his

Correctional Plan was in error, as Renchenski has refused to attend the new Sex Offender Program Group. On April 10, 2007, Renchenski sent an Inmate Request to me concerning this error and I informed him that the change was made on his Correctional Plan. Subsequently, I amended his Correctional Plan to indicate that he refused to participate in the Sex Offenders Program, Mod-High Intensity.

19. Renchenski has been encouraged on numerous occasions to participate in the SOTP. Although he has continually refused participation in the SOTP, his refusals have not affected his parole status, as he is serving a life sentence without parole, nor has he sought a sentence commutation. While Renchenski's name appears on the institutional sex offender's roster as a possible sex offender because of the sexual component of his offense, he has not been classified as a sex offender because he has refused to

engage himself in any of the Sex Offender Treatment Programs. Renchenski can request, in writing, at any time to be assessed in the SOTP, by simply filling out an Inmate Request to Staff Member Form. To date, Renchenski has not requested to be assessed under the SOTP.

20. Due to the sexual component Renchenski's crime, as he was engaged in a sexual act with the victim when the homicide occurred, his DOC Correctional Plan will continue to require participation Sex Offender Treatment Program, until his participation in the programming determines otherwise.

5/24/07
DATE

/s/ John P. Sidler
JOHN P. SIDLER
Chief Psychologist
SCI-Coal Township